

REMARKS/ARGUMENTS

The outstanding Office Action sets forth a species restriction requirement between “Species A”, a cooking appliance with a bore defined by a plurality of circular lances defined by claims 1-10; and “Species B”, a cooking appliance with a bore defined by an edge portion defined by claims 11-20. The Examiner has stated that no claim is currently considered generic to both species. For at least the reasons presented below, it is respectfully submitted that this restriction is improper and should be withdrawn.

The Examiner has identified the species in the present application by focusing on specific limitations found in independent claims 1 and 11. It is respectfully submitted the claims cannot define a species as set forth in the M.P.E.P. § 806.04(e). Typically, species are set forth by showing different embodiments illustrated in various drawings and are therefore commonly identified by different embodiments of the invention shown in respective figures. Regardless of whether the species are illustrated, a species must be different embodiments of a single invention wherein the various embodiments usually have no relationship therebetween. In any case, employing the claims to identify the species is seen to be improper. Moreover, the present invention details but a single embodiment illustrated in a single figure of the present application. More specifically, the present invention is directed to a sheathed electric heating element support bracket for RF cooking applications illustrated through the embodiment of Figure 4 in the present application.

Considered most important in connection with a species restriction is that the different species must be mutually exclusive (see M.P.E.P. § 806.04(f)). To this end, one species cannot be utilized in combination with another species. This is not the case in connection with the subject matter outlined by the Examiner. For instance, “Species A” and “Species B” are directed to a heating element support bracket having a bore that is defined either by an edge portion along which are arranged a plurality of circular lances

(claim 1) or simply by an edge portion (claim 11). There is nothing prohibiting the edge portion outlined in claim 11 from containing the plurality of circular lances. Both claim groups have limitations concerning a heating element support bracket having a bore. The circular lances defining the bore of "Species A" is not mutually exclusive to the edge portion defining the bore in "Species B." Both claim 1 and claim 11 recite that the heating element support bracket includes an edge portion, with claim 1 arranging a plurality of lances defining the bore and claim 11 simply defining the bore as the edge portion. This fact evidences the non-exclusive nature of this claimed subject matter. To this end, all of the claims in the application are generic to the single embodiment or "species" disclosed.

Based on the above, it is respectfully submitted that a species restriction in connection with the claimed subject matter of the present application is improper such that withdrawal of the species restriction and examination of the entire application is respectfully requested. The Applicant understands that in order to fully respond to the Office Action, an election of one of the two species outlined in the Office Action is required. That being said, the Applicant is at a loss to really choose between described species given that there is but a single species in the present application. More specifically, the Applicant is at a loss to understand how he can choose between two species when only a single species exists. However, given the requirements set forth in the M.P.E.P., the **Applicant would elect with traverse Species B** which is improperly defined by claims 11-20. In any case, claims 1-10 also read on the same "species." To this end, it is respectfully submitted that all of the claims are generic.

In essence, the present restriction requirement simply duplicates the restriction issued on June 30, 2005. The above arguments simply reiterates the response filed on July 28, 2005 to the first restriction requirement. In the second restriction requirement, the Examiner indicated that the Applicant's election with traverse was noted but that "no election was made..." Based on the above, it should be clearly evident that the Applicant did elect in the original response, with traverse,

“Species B” and stated that all the claims in the application are considered to be generic to the elected embodiment.

After reconsideration of this restriction requirement, examination of the application based on the prior art is respectfully requested. If the Examiner should have any additional questions or concerns regarding this response, he is cordially invited to contact the undersigned at the number provided below to further expedite the prosecution of the present application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Everett G. Diederiks, Jr.', written over a horizontal line.

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